

REMARKS

Claims 63 -76 and 78 are currently pending in the application. Applicants have amended claims 63, 71, and 73. Applicants request reconsideration of the application in light of the following remarks.

Request to Admit the Amendment

Applicants believe that the foregoing amendment presents the rejected claims in better form for appeal. Pursuant to 37 C.F.R. 1.116(a), Applicants request the Examiner admit the amendment. However, even if the Examiner decides not to admit the amendment under 37 C.F.R. 1.116(a), Applicants respectfully request the Examiner admit the amendment pursuant to 37 C.F.R. 1.116(b). The foregoing amendment is necessary to sufficiently define the implementation described in claims 63, 71, and 73, and provides necessary clarification. The amendments were not previously presented because Applicants did not previously believe the amendments were necessary. Upon these good and sufficient reasons for why the amendment is necessary and was not earlier presented, Applicants request the Examiner admit the amendment pursuant to either 37 C.F.R. 1.116(a) or 37 C.F.R. 1.116(b).

Rejections under 35 U.S.C. 102

Claims 63, 66-69, 71 and 73-76 were rejected under 35 U.S.C. 102(b) as being anticipated by Headley (U.S. Patent No. 5,642,903, hereinafter “Headley”). Applicants respectfully traverse this rejection and request reconsideration of the claims.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Brothers v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The identical invention must be shown in as complete detail as is contained in the claim. *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

Applicants disagree with the Examiner’s assertion that Headley teaches each and every element of independent claims 63 and 71. Independent claim 63, as amended, recites “...an

aluminum member comprising an aluminum housing and an aluminum closure member **exhibiting continuous grain alignment between the aluminum housing and the aluminum closure member**” (emphasis added). Amended claim 71 recites, in relevant part, “...forming an aluminum member comprising an aluminum housing and an aluminum closure **to include continuous grain alignment between the aluminum housing and the aluminum closure...**” (emphasis added). Support for the amendments to claims 63 and 71, to include continuous grain alignment and distinguish the claims from a housing and closure member that are welded together, is found in the specification at p. 9 of the application. The amendment to claim 73 was made to ensure use of consistent terminology within the claims.

In Headley, the closure 80 is connected to the opening 44 through a weld 84 to the radially extending surface 82 of the container 40 (see Headley, col 3, lines 3-6). Because the closure is welded to the container, the grain alignment is not continuous. A cross section view of the area between the closure and the container of Headley would inherently include discontinuities in the grain alignment at the boundaries of the weld, the extending surface, and the closure. As a result, Headley does not disclose an aluminum member “exhibiting continuous grain alignment between the aluminum housing and the aluminum closure member” as recited in claim 63, or “forming an aluminum member to include continuous grain alignment between the aluminum housing and the aluminum closure” as recited in claim 71. Because of this, Headley does not disclose each and every element of independent claims 63 and 71 as required by 35 U.S.C. 102(b). Dependent claims 66-69 and 73-76 are allowable over Headley, among other reasons, for depending from allowable independent claims 63 and 71, respectively.

Applicants therefore respectfully request that the anticipation rejections of claims 63, 66-69, 71, and 73-76 be withdrawn.

Rejections under 35 U.S.C. 103

To establish a *prima facie* case of obviousness under 35 U.S.C. 103, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Third, the cited prior art reference must teach or suggest all of the claim limitations. Furthermore, the suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based upon the Applicants' disclosure. A failure to meet any one of these criteria is a failure to establish a *prima facie* case of obviousness. MPEP 2143.

Claims 64, 70 and 78

Claims 64, 70, and 78 were rejected under 35 U.S.C. 103(a) as being unpatentable over Headley in light of Butt, et al. (U.S. Patent No.6,170,868, hereinafter "Butt"). Applicants respectfully traverse this rejection and request reconsideration of the claims.

Dependent claims 64, 70 and 78 are allowable over the combination of Headley and Butt, among other reasons, for depending from allowable independent claims 63 and 71, respectively. Further, as explained above with reference to independent claims 63 and 71, Headley does not disclose "continuous grain alignment between the aluminum housing and the aluminum closure." Additionally, there is no teaching or suggestion found in Headley to include an aluminum member with this structural characteristic. Butt, similarly, and the combination of teachings of Headley and Butt, do not provide any teaching or suggestion for this feature.

Claims 65 and 72

Claims 65 and 72 were rejected under 35 U.S.C. 103(a) as being unpatentable over Headley. Applicants respectfully traverse this rejection and request reconsideration of the claims.

Dependent claims 65 and 72 are allowable over Headley, among other reasons, for depending from allowable independent claims 63 and 71, respectively. Further, as explained above with reference to independent claims 63 and 71, Headley does not disclose “continuous grain alignment between the aluminum housing and the aluminum closure.” Additionally, there is no teaching or suggestion found in Headley to include an aluminum member with this structural characteristic.

Applicants respectfully request that the obviousness rejections of claims 64, 65, 70, 72, and 78 be withdrawn.

Regarding Doctrine of Equivalents

Applicants hereby declare that any amendments herein that are not specifically made for the purpose of patentability are made for other purposes, such as clarification, and that no such changes shall be construed as limiting the scope of the claims or the application of the Doctrine of Equivalents.

CONCLUSION

Applicants respectfully request that the amendments to the claims be entered and that a timely Notice of Allowance be issued in this case.

If any fees, including extension of time fees or additional claims fees, are due as a result of this response, please charge Deposit Account No. 50-3545. This authorization is intended to act as a constructive petition for an extension of time, should an extension of time be needed as a result of this response. The examiner is invited to telephone the undersigned if this would in any way advance the prosecution of this case.

Respectfully submitted,

Date: September 21, 2006

By: /Kenneth C. Booth/

Kenneth C. Booth
Reg. No. 42,342

BOOTH UDALL, PLC
1423 S. Higley Rd., Ste. 110
Mesa, AZ 85206
480.830.2700
480.830.2717 fax
kbooth@BoothUdall.com